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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,981	10/09/2003	Richard M. Lehrer		8811

7590 08/10/2005
Ricahrd M. Lehrer
1 Prior Court
Palisades, NY 10964

EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/681,981

Applicant(s)

LEHRER, RICHARD M.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 8, 10-13 and 17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 8 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. The drawings filed 05/23/05 are disapproved for having new matters. The original disclosure does not teach the specific location of the slit 60 and the specific location of slit 60 in Fig. 17. Furthermore, it seems that the embodiment in Fig. 17 is unattainable, i.e., one cannot pull the tab from the bottom and erect the dividers.

2. Claim 1 is objected to.

In claim 1, "1" should be replaced with --one--.

3. Claims 1, 3, 8, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Peck (1049910), or in the alternative, over Peck in view of Croft (1545487). Peck teaches a box having a plurality of ribs 20 secure to a plurality of bases 15 that are adhered to the bottom of the box. The ribs are selectively moveable between a storage position and a support position as shown in 1 and 2.

With respect to the new limitation that support position configured to maintain a portion of the food off the bottom of the box. It is regarded as an intended use, the new limitation does not impart any structure over the container in Peck.

In the alternative, it would have been obvious to one of ordinary skill in the art to provide a wrapper to position the food portion off the bottom of the box in Peck as taught by Croft to provide added protection.

Regarding claim 3, the hole on the two outside ribs 20 are the slits as claimed.

Regarding claim 4, one of the two outside ribs 20 comprises the front side as claimed.

4. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peck in view of Croft or Efty (1997816). Peck teaches a method of support comprising connecting a

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plurality of ribs to a bottom of the box wherein the plurality of ribs are coupled to a common connector, simultaneously moving the plurality of ribs with the common connect from a flat position to a perpendicular position, pulling the common connect to an outside portion of the box and locking the common connector against an outside of the box as shown in figs 1 where the connector, portion 21, is secured. Peck meets all claimed limitations except for the support an item of food below the top. Croft teaches that it is known in the art to provide a food item to be supported the ribs on two sides below the top. It would have been obvious to one of ordinary skill in the art to provide food item to be supported the ribs on two sides below the top to provide the desired food for the container.

Efty teaches that it is known in the art to provide tab 16 for supporting a food on the ribs. It would have been obvious to one of ordinary skill in the art to provide a supporting portion for supporting the food below the top in Peck as taught by Efty for sanitary purposes.

5. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peck rejection, as set forth above, in paragraph 3, and further in view of either Wright (1083514) or Rhodes (861899). To the degree it is argued that Peck does not teach the locking the connector, It would have been obvious to one of ordinary skill in the art to lock the connector against an outside of the box either by tying the string as shown in Rhodes or providing anchor 12 as shown in Wright to keep the ribs from folding back.

6. Claims 1, 3, 4, 8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esposito (4927073) in view of Meyers (4081125). Esposito teaches a box having a plurality of ribs 36 moveable between a storage position and a support position, the support position being substantially perpendicular relative to the bottom, and a connector 21 coupled to the plurality of

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ribs and configured to simultaneously move the plurality of ribs between the storage position and the support position, a connector coupled to the ribs and configured to extend from the inside of the box 24 to an outside of the box and mating with the box by tab 25 as shown in Fig. 3.

Esposito meets all claimed limitations except for the bases adhere to the bottom of the box. It would have been obvious to one of ordinary skill in the art to provide the bases 25a adhere to the box in Esposito as taught by Meyers to provide a more rigid partition.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Esposito rejection, as set forth in paragraph 5, and further in view of Croft or Efty. Either Croft or Efty teaches that it is known in the art to provide a food item to be supported the ribs on two sides below the top. It would have been obvious to one of ordinary skill in the art to provide food item to be supported the ribs on two sides below the top to provide the desired contents for the container.

8. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claim 17 is allowed.

10. Applicant's arguments filed 05/23/05 have been fully considered but they are not persuasive. It is noted in claim 1, the new limitation does not read over the prior art of record. The new limitation does not impart any structure over the container of either Peck or Esposito rejection. It is noted that the claims must be distinguished from the prior art in term of structure rather than function. In re Danly, 263 F.2d 844, 847(CCPA 1959). Furthermore, apparatus

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claims cover what a device is, not what a device does, *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F. 2d 1464, 1469 (CCPA 1935). See MPEP 2114.

11. With respect to the rejection over Esposito, it is noted that to provide the base in each of the dividers in Esposito would have been obvious to one of ordinary skill in this art. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
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